



Lic. #743776

May 23, 2016

Mulissa Smith,
Contract Awards
Department of Transportation
Division of Engineer Services
1727 30th Street
Sacramento, CA 95816

Re: FORMAL BID PROTEST - DREAMBUILDER
Contract #08-0R4404
08-SBD-15-R23.0/R26.2
B.O.D. 03/15/2016

Dear Ms. Smith:

Please accept this formal protest of the bid that was submitted by Dreambuilder (DRMR) for the above-mentioned contract for the following reasons:

1. DRMR does not possess the necessary work category codes to claim DBE participation credit on this project. Therefore, DRMR does not meet the specified 24% DBE goal and since DRMR did not submit a GFE, Caltrans must find them non-responsive.
2. DRMR's bid is non-responsive as this firm is not self-performing at least 30% of the work as specified by Caltrans' 2010 Standard Specifications, Section 5-1.13A.
3. DRMR failed to list a subcontractor for Bid Item #1, Lead Compliance Plan and the bid item is listed at \$21,000.00.

INVALID WORK CODES FOR CLAIMED PARTICIPATION:

In order for DRMR to meet the specified DBE goal of 24%, DRMR must have \$191,294.64 in valid DBE participation. As Caltrans is aware, the contract's Special Provisions Section 2-1.12B(1) state in part ... "You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the contract" [emphasis added].

According to DRMR's DBE participation submittal, DRMR has claimed DBE participation for the following items with invalid Work Codes:

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Item #	Description	Claimed Amt	Work Code Claimed	Work Code Required
11	Temporary Check Dam	\$ 1,400.00	C1901	C2066
12	Temporary Inlet Protection	\$ 5,150.00	C1901	C2066
13	Temporary Fiber Roll	\$ 4,480.00	C1901	C2066
14	Temporary Concrete Wash Out	\$ 5,150.00	C5105	C2066
15	Vegetation Control (Minor Concrete)	\$ 387,417.60	C5105	C0651
Total Disallowance		\$ 403,597.60		

Work Code C1901 "Roadway Excavation," "consists of all excavation involved in the grading and construction of the roadway" according to CUCP's Work Category Code Descriptions available online.

Work Code C2066 "Temporary Erosion Control," is the required Code DRMR would have to possess at bid time in order to receive DBE participation credit. C2066 is describes as, "Firms that use fiber rolls, gravel berms, check dams, drainage inlet protection, slope control blankets, concrete washout systems, temporary construction entrances, straw bale barriers, during the construction phase (not the final product).

Caltrans has no option but to disallow the claimed DBE participation for Bid Items #11, 12, 13 and #14 for a total of \$16,180.00 as DRMR does not possess the required Work Codes for the type of work they have claimed for DBE participation.

Work Code C5105 "Minor Concrete Structures" is described as "plywood formations with concrete poured into them."

Work Code 0651 "Concrete & Cement Supplier" is described as "this industry comprises establishments primarily engaged in the merchant wholesale of distribution of stone, cement, lime, construction sand, and gravel; brick; asphalt and concrete mixtures; and/or concrete, stone, and structural clay products."

Now, DRMR has listed a subcontractor to perform 28% of Bid Item #15 "Vegetation Control (Minor Concrete)" and DRMR alleges that they will self-perform and DRMR claimed full DBE participation for the remaining 72% of this item. The plywood formations are a small percentage (if any) of the work described for Item #15. We surmise that the listed subcontractor must be performing this specific work based on the percentage value assigned by DRMR at the time of bid.

Therefore, DRMR must be claiming DBE participation credit for the large supply of ready mix concrete that is required to be poured for Bid Item #15 (Minor Concrete), plus the plant opening fees, additives, etc. However, in order for DRMR to claim DBE participation for the concrete supply, DRMR must possess the Work Code C0651 "Concrete & Cement Supplier" to receive full DBE credit for the concrete supply, which DRMR does not possess.

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The concrete will be delivered by a non-DBE supplier with the supplier's own distribution equipment and from the suppliers own plant. DRMR must not be allowed to claim DBE participation credit for the purchase and/or supply of the ready mix concrete that is required to complete Bid Item #15 or DRMR will be given a preferential bid advantage over all other prime contractors who would be disallowed a claimed DBE participation for a non-DBE ready mix supply company.

Caltrans has no option but to disallow the claimed DBE participation for Bid Items #15 for a total of \$387,417.60 as DRMR does not possess the required Work Codes for the type of work they have claimed for DBE participation nor is DRMR a regular dealer of ready mix concrete.

It is interesting that Caltrans routinely awards contracts to DRMR as a DBE prime contractor entity and Caltrans routinely grants DBE participation to DRMR for the following work codes: C1200 Construction Area Signs, C1201 Traffic Control Systems, C1531 Plane Asphalt, C1601 Clearing & Grubbing, C1701 Develop Water Supply, C1901 Roadway Excavation, C2065 Irrigation System, C3901 Asphalt Concrete, C3910 Paving Asphalt, C5105 Minor Concrete Structure and C6200 Alternative Pipe Culvert. Often time, DBE preference is granted blindly without even cross referencing the alleged work DRMR is self-performing versus the Work Codes they actually possess.

However, almost every non-DBE prime contractor that bids for Caltrans is still trying to figure out how Caltrans certified this DBE firm when the said company does not appear to own any of the specialized equipment needed to perform any of the work described in the Work Codes that DRMR is certified to self-perform and receive DBE credit. Paving Asphalt requires specialized paving equipment along with trained operator engineers to operate the said equipment. Planing Asphalt requires specialized planing equipment along with trained operator engineers to operate this special type of equipment. Placing asphalt concrete requires not only an asphalt plant but also distribution equipment!

It is absurd that a business run from a residence can be certified with Work Codes and be granted DBE participation as a DBE prime when 1) They do not own the specific type of equipment need for the Work Codes. 2) They do not gainfully employ operator engineers to run the specialized equipment. 3) They don't have the experience to perform the specific type of work described in the said Work Codes.

Certainly, DRMR can subcontract this work and bid as a prime contractor. However, DRMR must subcontract these types of works to a DBE certified company in order to receive valid DBE participation. If DRMR is granted DBE participation based on the Work Codes they do not self-perform, then Caltrans has given this prime contractor a colossal advantage over other prime contractors that are not certified as DBEs. DRMR must demonstrate to Caltrans that they could self-perform the work described in all of the Work Codes that they possess in order to obtain DBE preference on any given project.

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The disallowance of DRMR's claimed DBE participation of \$403,597.60 would reduce DRMR's total DBE participation to \$180,871.00 or 22.6, which is short of the specified DBE Goal of 24%. The amount of \$180,871.00 includes DRMR's \$77,071.00 in mobilization. However, in our opinion DRMR should not be granted participation for mobilization since there is not valid Work Code for such item. Thus, the disallowance of \$403,597.60 + \$ 77,071.00 = 480,668.60 would bring DRMR's total DBE participation to 103,800.00 or 13%, which is far below the specified 24% that is stated in the contract. Since DRMR failed to submit a GFE Caltrans has no option but to find DRMR non-responsive and award the contract to the next lowest responsible bidder.

FAILURE TO SELF-PERFORM AT LEAST 30% OF BID VALUE:

Section 5-1.13A "Subcontracting" of Caltrans' 2010 Standard Specifications states in part, "Except for a building-construction non-federal-aid contract, perform work equaling at least 30% of the value of the original total bid with your employees and with equipment you own [emphasis added], with or without operators." A failure to perform at least 30% of the original total bid violates Public Contract Code, Section 4100 et.seq.

In this contract, DRMR has listed E-Nor Innovations (ENOR) to perform 30% of Item #3, Traffic Control Systems. It is our opinion that the percentage of work may have been manipulated by DRMR, unbeknownst to Caltrans, because DRMR would not be able to submit a bid as a prime contractor unless DRMR could prove the self-performance at least 30% of the value of the work in their submitted bid. DRMR's subcontractor listing is suspicious at best because DRMR possesses the Work Code associated with Traffic Control Systems in their DBE certification. If DRMR is capable of performing this bid item with its own forces why subcontract the work out to an alternative DBE firm? Further, why only subcontract only 20 days of the 145 days of work to an alternative DBE firm? Most likely it is the manipulation of numbers in order to bid as a prime contractor. Even more likely, it is because DRMR does not self-perform this specific type of work, as evident on many of their other projects and ENOR may be performing 100% of the bid item contrary to the stated listing.

Another example of a possible self-performance discrepancy is as follows:

DRMR's bid for this particular contract is \$797,061.00 and DRMR has listed 58% of the work to be subcontracted. However, if Caltrans would take a closer look at DRMR's subcontract listing, Caltrans may see the same unfair practice that we see. The listing of Robles Engineering (Robles) is for only 28% for Bid Item #15 (Minor Concrete-Vegetation Control). This is suspicious just on the face. Caltrans needs to ask itself again, why would DRMR list this subcontractor to perform only 28% of the bid item and not 100% of the bid item?

Robles appears to be an "A" licensed contractor who specializes in concrete work. According to DRMR's DBE certification, DRMR is certified to self-perform minor concrete work. Certainly DRMR's "A" license provides confirmation that this firm is licensed by CSLB to perform this

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type of work (minor concrete). So why list a subcontractor to perform a fraction of the bid item work?

Is it possible that DRMR cannot self-perform the specified work? Robles is not a certified DBE firm, so there is not any DBE advantage to listing this particular subcontractor. The most likely conclusion is two-fold. 1) DRMR listed Robles for only 28% in order for DRMR to still be able to submit the bid as prime contractor and not violate PCC Section 4100 et seq. 2) DRMR needs the other 72% of the said bid item to meet the contract's specified 24% DBE Goal, which as stated above, should be disallowed due to invalid Work Codes. DRMR is most likely cognizant of all of these requirements and alters the percentages of subcontracted work accordingly to circumvent the process, which provides them a superior bidder advantage over other primes. This type of transgression has been going on right under Caltrans' supervisions for some time now.

Bid Item #15 is specified as minor concrete for vegetation control. DRMR has listed Robles Engineering (a concrete contractor) for 28% of the said work or \$150,662.40. The concrete materials specified for Bid Item #15 equals +/- \$195,000.00. That leaves a difference of \$202,417.60 on the table for the work in this bid item. Either DRMR has manipulated the subcontractor listing or DRMR's bid is completely unbalanced and less than every other prime contractor that actually does self-perform this bid item.

Another fact is that even if DRMR is purchasing the said concrete ready mix materials for Bid Item #15, this purchase does not qualify as self-performance, as specified in Section 5-1.13A. In order to qualify as self-performance DRMR would have to own the cement plant, own the ready-mix equipment and own the trucks that would deliver the said materials to the project. Again, it appears that the percentage of work subcontracted may have been manipulated for appearances that DRMR is self-performing at least 30% of the value of the bid when in fact they are not.

FAILURE TO LIST SUBCONTRACTOR:

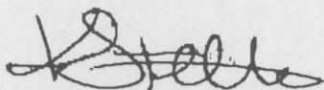
DRMR's submitted price for Bid Item #1 "Lead Compliance Plan" (LCP) is \$21,000.00 which exceeds the subcontractor listing threshold. The LCP must be prepared and signed by a Licensed Hygienist. A failure to list a subcontractor for a specific item means the prime contractor must self-perform the said work. However, in order to perform the work for Bid Item #1, you must be a Licensed Hygienist. A Statewide search for a licensed hygienist in DRMR's employ returned zero results. Further, if DRMR was capable of preparing LCPs, certainly DRMR would possess the Work Code for this item.

Once Caltrans' Contract Awards, Contract Evaluations and OBEBO evaluates this protest in detail Caltrans would have no other option but to find DRMR non-responsive and move to award the project to the next lowest, responsive and responsible bidder.

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If you have any questions, please do not hesitate to contact our office. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Stelle', with a stylized flourish at the end.

Kristi Stelle
Vice President of Operations

KS:
VIA FAX